



Appeal Decision

Site visit made on 19 September 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st November 2023

Appeal Ref: APP/E2734/W/23/3326057

Simpson House, Windsor Court, Clarence Drive, Harrogate, North Yorkshire HG1 2PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
- The appeal is made by Bramhope Property and Investments Limited against the decision of Harrogate Borough Council.
- The application ref: ZC23/01399/PCBSR, dated 31 March 2023, was refused by notice dated 25 May 2023.
- The development proposed is prior notification for change of use of offices (Use Class E) to 12 apartments (Use Class C3).

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO for prior notification for change of use of offices (Use Class E) to 12 apartments (Use Class C3) at Simpson House, Windsor Court, Clarence Drive, Harrogate, North Yorkshire HG1 2PE in accordance with the terms of the application, Ref ZC23/01399/PCBSR, dated 31 March 2023, and the details submitted with it subject to the conditions set out on the attached schedule.

Applications for Costs

2. An application for costs was made by Bramhope Property and Investments Limited against Harrogate Borough Council. This application is the subject of a separate decision.

Procedural Matter

3. The description in the above banner heading has been taken from the decision notice as no description was provided in the planning application form, and this accurately reflects the proposed development.

Background and Main Issue

4. Under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO, planning permission is granted for the change of use from commercial, business and service (use class E) to dwellinghouses (use class C3) subject to limitations and conditions.
5. The prior approval matters for Class MA includes amongst other matters, the provision of adequate natural light in all habitable rooms of the dwellinghouses. Paragraph W.(2A) of Part 3 provides that prior approval must be refused if adequate natural light is not provided in all habitable rooms.

6. In that context, the main issue is whether the proposed development would be granted planning permission by Article 3, Schedule 2, Part 3, Class MA of the GPDO with regard to adequate natural light in all habitable rooms of the dwellinghouses.

Reasons

7. The appeal site is a three-storey office building located to the south of a cluster of other office buildings which have been converted to residential use. Car parking areas are located to the eastern and western edge of the building and a steep embankment is located to the south separating the site from surrounding roads including Cornwall Road which is located at a higher level than the appeal site. The embankment contains a number of trees and hedges some of which are protected by a Tree Preservation Order (TPO).
8. The proposed development seeks to change the use of the building to 12 apartments which would comprise 4 apartments on each floor with 2 located to the front of the building and 2 located to the rear. The rear facing apartments would primarily face onto the embankment area and tree coverage and would have habitable rooms on this elevation.
9. At my site visit, the trees were in leaf like is shown in the photographs provided of the building dated 17 May 2023. I observed the location of the trees and extent of the canopy areas in relation to the building. Whilst only a snapshot in time, I noted that whilst the trees are located only a short distance from the building, they vary in size and height and are located at various positions along and up the embankment with many sitting in an elevated position at the top of the embankment. There also appeared to be various separation distances between the trees which allowed for a level of light to travel through and between. As a result of this staggered arrangement, the canopy areas vary in terms of their overall height and spread with some exceeding the height of the windows. I was able to enter the building and access each floor. I noted that a level of light was able to pass through to the windows on the rear elevation and the windows on the eastern and western elevation appeared to receive good levels of light generally even those towards the rear part of the building.
10. Works to the trees are said to have taken place prior to the application and I acknowledge the associated planning history including TPO applications. However, I must determine the appeal based on its own merits and evidence before me at the present time.
11. An Arboricultural Impact Assessment has been undertaken which confirms that no tree removal is required, and a preliminary tree works schedule has been provided detailing recommended pruning works. I accept that the development is likely to require some pruning of the canopy area given that there is some spread over the appeal site and note the challenges regarding this in terms of TPO's, management and level of control matters along with certain works not being supported such as crown lifting. I also acknowledge the factors as set out relating to trees during the design process. However, as the appeal relates to a prior notification application under Class MA of the GPDO, my considerations are limited in accordance with the relevant legislation which does not consider external landscaping/tree works.

12. Notwithstanding this, and given the close proximity of the embankment including its trees and hedges, an Internal Daylight and Sunlight Study has been undertaken to investigate the daylight and sunlight within the residential units. The study uses the industry standard methodology as prescribed by the Building Research Establishment (BRE) and British Standard Guidance.
13. In terms of daylight, this has been assessed using a software climate-based approach which is carried out for each hour over the course of the year using a local weather file which accounts for varying sky conditions and sun positions throughout the year. A representative model of the space is required together with key parameter's such as nearby obstructions that are a reasonable representation of those for the actual completed building. Comments have been made regarding the accuracy of the plans in relation to ground levels and trees. However, I find the plans to be a reasonable representation for the purposes of the study. In terms of sunlight, this has been assessed by measuring the amount of sunlight hours a window may receive on 21st March 2023 using specialise software.
14. The results show that all habitable rooms tested meet and are in excess of the minimum requirements of the guidelines. I note that some rooms previously failed. However, as set out above, I must determine the appeal based on its own merits and the evidence before me at the present time. I appreciate that the time period being used for the assessment was when the trees were not in leaf and note concerns raised regarding the growing season when canopies are full. However, BRE guidelines recommends that trees should not be considered in daylight and sunlight analysis as doing so would result in a poorer outcome. This is due to accuracy in positioning and shape in a 3D model and the software interprets them as solid opaque structures, like brick walls. This would clearly not reflect the actual behaviour of trees, which allows light to pass through and will not be in leaf for portions of the year. I have no compelling case to the contrary and therefore no reason to question this methodology.
15. Further and notwithstanding the above, the study undertaken explains that the trees and surrounding topography have been included within the study incorporating a 'European Beech' material in full leaf (assuming worst case that the trees are in full leaf for 365 days of the year). On this basis, despite the time period being used when the trees were not in leaf, this would have limited bearing on the outcome in terms of daylight as the study covers the full year based on trees being in full leaf. This will of course be different in reality and indeed better during periods when trees are not in leaf.
16. In terms of sunlight, the study assumes a 'European Beech' in bare leaf and assumes that the development will face less obstruction from dense leaf coverage, as it is conducted when trees are not fully leafed and is said to be tested on any date between February 1st and March 21st. Again, I have no compelling case against this methodology.
17. In any event, even if the sunlight aspect considered trees in full leaf, the results would still likely pass the compliance test which is at least one room per dwelling having over 1.5 hours sunlight exposure. The apartments to the rear closest to the trees and hedging tended to score the most in terms of sunlight exposure hours far exceeding the compliance level. Additionally, at my site visit I observed that whilst there are trees/hedging to the south of the site, the extent to which these impact the east and west elevation is limited. This is due

to their overall positioning in relation to these elevations and their associated windows. With this in mind, the main living areas associated with the apartments to the rear are located on the corner aspect with windows located to both the side and rear. The sunlight exposure hours to these windows would therefore be unlikely to change. Consequently, even if rooms to the rear fell below the compliance test, the overall dwelling would still likely be compliant.

18. I do not dispute that the trees to the south have a high amenity value and help to soften and screen the structure and are healthy specimens with long life expectancies. I also recognise that the existing use does not conflict with the trees and that there have been no TPO applications for this particular use. However, this would not alter the findings of the study that has been completed or my observations onsite where a level of light was apparent. Additionally, I have no substantive evidence to demonstrate that the rear of the building would be in near constant shade/stygian gloom or that it would prevent solar gain. As all habitable rooms tested meet and are in excess of the minimum requirements of the guidelines in relation to daylight and sunlight then it cannot be assumed that future occupiers would complain, apply for tree works or that there would be pressure for removal/pruning.
19. Despite claims that new residential development would not be allowed into the canopy spread of large, maturing trees, I am determining a prior notification application under Class MA opposed to any other form of development.
20. For the above reasons, I conclude that the proposed development would provide adequate natural light in all habitable rooms of the dwellinghouses and thus meets the requirements of Article 3, Schedule 2, Part 3, Class MA of the GPDO.

Other Matters

21. The site is located within the Harrogate Conservation Area (CA). I have had regard to my statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. However, in assessing the compliance with the terms of the GDPO, the Council do not raise any particular concern in this regard as there are no proposed changes to the external fabric of the building. Based on the plans submitted and my own observations onsite, I have no reason to disagree. On this basis, the proposal would preserve the character and appearance of the CA.
22. As set out above, my considerations are limited in accordance with the relevant legislation which does not consider matters relating to privacy or matters of noise in relation to existing residential occupiers. Matters relating to transport and highways has been assessed and the Council concludes that the proposal would not add significantly to any pre-existing problems of access, road safety or traffic flow due to sufficient parking provision and the sustainable location of the site. From the evidence before me and my own observations onsite, I have no reason to disagree with this assessment. I have no firm evidence that the apartments would be bought as holiday lets and any future use would be subject to assessment in its own right. I also do not have any firm evidence to suggest that future activities or events would cause issues in terms of highway safety.

Conditions

23. Any planning permission granted for the development under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO is subject to the standard conditions set out in paragraph MA.2. For Class MA cases, Paragraph W applies which allows decision makers to *"grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval"*.
24. I have considered the conditions suggested by the Council and amended these where necessary for clarity. A plans condition is necessary in the interests of certainty and to ensure the submitted layout is implemented. A condition relating to unexpected contamination is necessary to ensure the safety and stability of the development, and directly relates to the prior approval matters. However, suggested conditions relating to waste storage and construction hours do not relate to the prior approval matters, and so cannot be attached. The officer's report explains that in previous applications the Highways Authority recommended a parking condition although this has not formally been recommended for this particular application and current appeal. Notwithstanding this, the proposed parking provision is shown on the approved plans.

Conclusion

25. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted.

N Teasdale

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No. PL301 Revision P03; Site Plan Drawing No. PL302 Revision P01; Apartment Layouts – as proposed Drawing No. PL303 Revision P02; Elevations 1 Drawing No. PL304 Revision P01; Elevation 2 Drawing No. PL305 Revision P01.
- 2) In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all groundworks in the affected area (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2 working days. Groundworks in the affected area shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the local planning authority or (b) the local planning authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy.

Following completion of any measures identified in the approved Remediation Strategy, a Verification Report shall be submitted to the local planning authority. No part of the site shall be brought into use until such time as the site has been remediated in accordance with the approved Remediation Strategy and a Verification Report in respect of those works has been approved in writing by the local planning authority.

End of schedule